

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN SENATE JUNE 9, 2010

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AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1565

Introduced by Assembly Member Buchanan

*(Coauthors: Assembly Members Blakeslee, Coto, Harkey, Huber,
V. Manuel Perez, Silva, and Solorio)*

(Coauthor: Senator Harman)

March 12, 2009

An act to add and repeal Chapter 12.9 (commencing with Section 7092) of Division 7 of Title 1 of the Government Code, and to add and repeal Sections 17052.66 and 23609.66 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1565, as amended, Buchanan. Research and development tax credit areas.

Existing law establishes the Department of Housing and Community Development with duties that include overseeing various programs to promote economic and community development throughout the state.

This bill would authorize, until January 1, 2016, the department to designate, based on specific factors, a Research and Development Tax Credit Area located within an Innovation Hub or a city, as respectively defined.

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research activities. The amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, under the Corporation Tax Law, 24% of the basic research payments, as defined.

This bill would, under both laws, *in lieu of that credit*, for each taxable year beginning on or after January 1, 2011, and before January 1, 2016, provide to a qualified taxpayer, as defined, a tax credit for research and development, as defined, for expenses equal to 20% of the research and development expenses relating to the development of alternative energy sources and advanced transportation technologies, as those terms are defined, conducted in California in a research and development tax area, as described. The bill would further require the Legislative Analyst's Office to report to the Legislature on the effectiveness of the tax credit program established by this act.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 12.9 (commencing with Section 7092)
2 is added to Division 7 of Title 1 of the Government Code, to read:
3
4 CHAPTER 12.9. RESEARCH AND DEVELOPMENT TAX CREDIT
5 AREA
6
7 7092. Unless context requires otherwise, the following
8 definitions shall apply to this chapter:
9 (a) "City" means a city incorporated on or after July 1, 2000.
10 (b) "Department" means the Department of Housing and
11 Community Development.
12 (c) "iHub" means an Innovation Hub designated by the Business,
13 Transportation and Housing Agency.
14 (d) "Research and Development Tax Credit Area" or "area"
15 means a geographical region designated by the department pursuant
16 to this chapter.

1 7092.5. A Research and Development Tax Credit Area shall
2 be located entirely within the jurisdiction of a city or iHub and
3 shall be smaller in size than the city or iHub.

4 7092.10. (a) A city or iHub is authorized to make a proposal
5 to the department to have a Research and Development Tax Credit
6 Area located within its jurisdiction.

7 (b) A proposal to have the department designate an area shall
8 include, but not be limited to, both of the following:

9 (1) The geographical boundaries of the proposed area.

10 (2) The targeted number of new, permanent jobs anticipated to
11 be created by the proposed area.

12 7092.15. (a) The department is authorized to designate a
13 Research and Development Tax Credit Area after evaluating a
14 proposal by a city or iHub.

15 (b) The department shall evaluate a proposal to designate an
16 area based upon all of the following criteria:

17 (1) The extent to which the anticipated benefit to the state from
18 projects or products produced within the proposed area equals or
19 exceeds the anticipated benefit to entities claiming the tax credits
20 pursuant to Sections 17052.66 and 23609.66 of the Revenue and
21 Taxation Code.

22 (2) The extent to which the proposed area will create new,
23 permanent jobs in this state.

24 (3) The extent to which projects or products produced within
25 the proposed area result in a reduction of greenhouse gases, a
26 reduction in air or water pollution, an increase in energy efficiency,
27 or a reduction in energy consumption, beyond what is required by
28 any federal or state law or regulation.

29 (4) Any other factors the department deems appropriate in
30 accordance with this chapter.

31 7092.20. This chapter shall remain in effect only until January
32 1, 2016, and as of that date is repealed.

33 SEC. 2. Section 17052.66 is added to the Revenue and Taxation
34 Code, to read:

35 17052.66. (a) For each taxable year beginning on or after
36 January 1, 2011, and before January 1, 2016, there shall be allowed
37 as a credit against the "net tax" (as defined by Section 17039) for
38 the taxable year an amount determined in accordance with Section
39 41 of the Internal Revenue Code, except as otherwise provided in
40 this section.

(b) For purposes of this section:

(1) “Qualified taxpayer” means a taxpayer that conducts research and development in a research and development tax area relating to either of the following fields:

~~(A) Alternative energy sources, as defined in paragraph (2) of subdivision (b) and subdivision (c) of Section 26003 of the Public Resources Code; the application of cogeneration technology, as defined in Section 25134 of the Public Resources Code; the conservation of energy through the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels. Alternative energy sources also include advanced electric distributive generation technology, as defined in subdivision (a) of Section 379.8 of the Public Utilities Code, or energy storage technologies and their component materials.~~

~~(A) “Alternative sources” means alternative sources as defined in paragraph (1) of subdivision (c) of Section 26003 of the Public Resources Code. Alternative sources also include advanced electrical distribution generation technology, as defined in subdivision (a) of Section 379.8 of the Public Utilities Code.~~

~~(B) Advanced transportation technologies, as defined in subdivision (d) of Section 26003 of the Public Resources Code. Advanced transportation technologies include emerging commercially competitive transportation-related technologies identified by a transportation authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state’s commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, intelligent vehicle highway systems, advanced telecommunications for transportation, command, control, and communications for public transit vehicles and systems, electric vehicles and ultralow-emission vehicles, high-speed rail and magnetic levitation passenger systems, and fuel cells.~~

(2) “Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulation thereunder.

(3) “Research and development tax area” means a research and development tax area in the state established pursuant to Chapter 12.9 (commencing with Section 7092) of Division 7 of Title 1 of

the Government Code, but excludes any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code, *a targeted tax area pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code, a manufacturing enhancement area pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code, or a local agency military base recovery area pursuant to Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code* .

(c) In the case where the credit allowed under this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and succeeding years if necessary, until the credit has been exhausted, but only to the extent that the qualified taxpayer continues to conduct research and development in the research and development tax area during the time for which the reduction in “net tax” is claimed.

(d) For each taxable year beginning on or after January 1, 2011, the reference to “Section 501(a)” in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read “this part or Part 11 (commencing with Section 23001).”

(e) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(f) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (e); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(g) Section 41(a)(3) of the Internal Revenue Code shall not apply.

(h) Section 41(b)(3)(D) of the Internal Revenue Code, relating to amounts paid to eligible small businesses, universities, and federal laboratories, shall not apply.

1 (i) Section 41(f)(6), relating to energy research consortium,
2 shall not apply.

3 ~~(j) The credit allowed by this section shall be in addition to any~~
4 ~~other credit allowed by this part for the expenses on which the~~
5 ~~credit under this section is based.~~

6 (j) Section 41(c)(5) of the Internal Revenue Code, relating to
7 election of alternative simplified credit, shall not apply.

8 (k) For each taxable year beginning on or after January 1,
9 2011:

10 (1) The reference to “3 percent” in Section 41(c)(4)(A)(i) of
11 the Internal Revenue Code is modified to read “one and forty-nine
12 hundredths of one percent.”

13 (2) The reference to “4 percent” in Section 41(c)(4)(A)(ii) of
14 the Internal Revenue Code is modified to read “one and
15 ninety-eight hundredths of one percent.”

16 (3) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of
17 the Internal Revenue Code is modified to read “two and forty-eight
18 hundredths of one percent.”

19 (l) The credit allowed by this section shall be in lieu of the credit
20 under Section 17052.12.

21 (m) (1) The amount of the credit otherwise allowed under this
22 section, including any credit carryovers from prior years, that may
23 reduce the “net tax” for the taxable year shall not exceed the
24 amount of tax that would be imposed on the taxpayer’s business
25 income attributed to a research and development tax area
26 determined as if that attributable income represented all the income
27 of the taxpayer subject to tax under this part.

28 (2) Attributable income shall be that portion of the taxpayer’s
29 California source business income that is apportioned to the
30 research and development tax area. For that purpose, the
31 taxpayer’s business income that is attributable to sources in this
32 state shall first be determined in accordance with Chapter 17
33 (commencing with Section 25101) of Part 11. That business income
34 shall be further apportioned to the research and development tax
35 area in accordance with Article 2 (commencing with Section
36 25120) of Chapter 17 of Part 11, modified for purposes of this
37 section in accordance with paragraph (3).

38 (3) Income shall be apportioned to a research and development
39 tax area by multiplying the total California business income of the
40 taxpayer by a fraction, the numerator of which is the property

1 factor, plus the payroll factor, and the denominator of which is
2 two. For purposes of this paragraph:

3 (A) The property factor is a fraction, the numerator of which is
4 the average value of the taxpayer's real and tangible personal
5 property owned or rented and used in the research and
6 development tax area during the taxable year, and the denominator
7 of which is the average value of all the taxpayer's real and tangible
8 personal property owned or rented and used in this state during
9 the taxable year.

10 (B) The payroll factor is a fraction, the numerator of which is
11 the total amount paid by the taxpayer in the research and
12 development tax area during the taxable year for compensation,
13 and the denominator of which is the total compensation paid by
14 the taxpayer in this state during the taxable year.

15 (4) The portion of any credit remaining, if any, after application
16 of this subdivision, shall be carried over to succeeding taxable
17 years, as if it were an amount exceeding the "net tax" for the
18 taxable year, as provided in subdivision (c).

19 ~~(k)~~

20 (n) This section shall remain in effect only until December 1,
21 2016, and as of that date is repealed.

22 SEC. 3. Section 23609.66 is added to the Revenue and Taxation
23 Code, to read:

24 23609.66. (a) For each taxable year beginning on or after
25 January 1, 2011, and before January 1, 2016, there shall be allowed
26 as a credit against the "tax" (as defined by Section 23036) an
27 amount determined in accordance with Section 41 of the Internal
28 Revenue Code, except as otherwise provided in this section.

29 (b) For purposes of this section:

30 (1) "Qualified taxpayer" means a taxpayer that conducts research
31 and development in a research and development tax area relating
32 to either of the following fields:

33 ~~(A) Alternative energy sources, as defined in paragraph (2) of~~
34 ~~subdivision (b) and subdivision (c) of Section 26003 of the Public~~
35 ~~Resources Code; the application of cogeneration technology, as~~
36 ~~defined in Section 25134 of the Public Resources Code; the~~
37 ~~conservation of energy through the use of solar, biomass, wind,~~
38 ~~geothermal, hydroelectricity under 30 megawatts, or any other~~
39 ~~source of energy, the efficient use of which will reduce the use of~~
40 ~~fossil and nuclear fuels. Alternative energy sources also include~~

~~advanced electric distributive generation technology, as defined in subdivision (a) of Section 379.8 of the Public Utilities Code, or energy storage technologies and their component materials.~~

(A) *“Alternative sources” means alternative sources as defined in paragraph (1) of subdivision (c) of Section 26003 of the Public Resources Code. Alternative sources also include advanced electrical distribution generation technology, as defined in subdivision (a) of Section 379.8 of the Public Utilities Code.*

(B) ~~Advanced transportation technologies, as defined in subdivision (d) of Section 26003 of the Public Resources Code. Advanced transportation technologies include emerging commercially competitive transportation-related technologies identified by a transportation authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state’s commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, intelligent vehicle highway systems, advanced telecommunications for transportation, command, control, and communications for public transit vehicles and systems, electric vehicles and ultralow-emission vehicles, high-speed rail and magnetic levitation passenger systems, and fuel cells.~~

(2) *“Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.*

(3) *“Research and development tax area” means a research and development tax area in the state established pursuant to Chapter 12.9 (commencing with Section 7092) of Division 7 of Title 1 of the Government Code, but excludes any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code, a targeted tax area pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code, a manufacturing enhancement area pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code, or a local agency military base recovery area pursuant to Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code .*

(c) ~~In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in~~

the following year, and succeeding years if necessary, until the credit has been exhausted, but only to the extent that the qualified taxpayer continues to conduct research and development in the research and development tax area during the time for which the reduction in “tax” is claimed.

(d) For each taxable year beginning on or after January 1, 2011, the reference to “Section 501(a)” in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read “this part or Part 10 (commencing with Section 17001).”

(e) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(f) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(g) Section 41(a)(3) of the Internal Revenue Code shall not apply.

(h) Section 41(b)(3)(D) of the Internal Revenue Code, relating to amounts paid to eligible small businesses, universities, and federal laboratories, shall not apply.

(i) Section 41(f)(6) of the Internal Revenue Code, relating to energy research consortium, shall not apply.

~~(j) The credit allowed by this section shall be in addition to any other credit allowed by this part for the expenses on which the credit under this section is based.~~

(j) Section 41(c)(5) of the Internal Revenue Code, relating to election of alternative simplified credit, shall not apply.

(k) For each taxable year beginning on or after January 1, 2011:

(1) The reference to “3 percent” in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read “one and forty-nine hundredths of one percent.”

1 (2) *The reference to “4 percent” in Section 41(c)(4)(A)(ii) of*
2 *the Internal Revenue Code is modified to read “one and*
3 *ninety-eight hundredths of one percent.”*

4 (3) *The reference to “5 percent” in Section 41(c)(4)(A)(iii) of*
5 *the Internal Revenue Code is modified to read “two and forty-eight*
6 *hundredths of one percent.”*

7 (l) *The credit allowed by this section shall be in lieu of the credit*
8 *under Section 23609.*

9 (m) *Section 23663 shall not apply to the credit allowed by this*
10 *section.*

11 (n) (1) *The amount of the credit otherwise allowed under this*
12 *section, including any credit carryovers from prior years, that may*
13 *reduce the “tax” for the taxable year shall not exceed the amount*
14 *of tax that would be imposed on the taxpayer’s business income*
15 *attributed to a research and development tax area determined as*
16 *if that attributable income represented all the income of the*
17 *taxpayer subject to tax under this part.*

18 (2) *Attributable income shall be that portion of the taxpayer’s*
19 *California source business income that is apportioned to the*
20 *research and development tax area. For that purpose, the*
21 *taxpayer’s business income that is attributable to sources in this*
22 *state shall first be determined in accordance with Chapter 17*
23 *(commencing with Section 25101). That business income shall be*
24 *further apportioned to the research and development tax area in*
25 *accordance with Article 2 (commencing with Section 25120) of*
26 *Chapter 17, modified for purposes of this section in accordance*
27 *with paragraph (3).*

28 (3) *Income shall be apportioned to a research and development*
29 *tax area by multiplying the total California business income of the*
30 *taxpayer by a fraction, the numerator of which is the property*
31 *factor, plus the payroll factor, and the denominator of which is*
32 *two. For purposes of this paragraph:*

33 (A) *The property factor is a fraction, the numerator of which is*
34 *the average value of the taxpayer’s real and tangible personal*
35 *property owned or rented and used in the research and*
36 *development tax area during the taxable year, and the denominator*
37 *of which is the average value of all the taxpayer’s real and tangible*
38 *personal property owned or rented and used in this state during*
39 *the taxable year.*

1 (B) *The payroll factor is a fraction, the numerator of which is*
2 *the total amount paid by the taxpayer in the research and*
3 *development tax area during the taxable year for compensation,*
4 *and the denominator of which is the total compensation paid by*
5 *the taxpayer in this state during the taxable year.*

6 (4) *The portion of any credit remaining, if any, after application*
7 *of this subdivision, shall be carried over to succeeding taxable*
8 *years, as if it were an amount exceeding the “tax” for the taxable*
9 *year, as provided in subdivision (c).*

10 ~~(k)~~

11 (o) This section shall remain in effect only until December 1,
12 2016, and as of that date is repealed.

13 SEC. 4. Between January 1, 2016, and December 31, 2016,
14 the Legislative Analyst’s Office shall report to the Legislature on
15 the effectiveness of the Research and Development Tax Credit
16 Area program established pursuant to Chapter 12.9 (commencing
17 with Section 7092) of Division 7 of Title 1 of the Government
18 Code, by evaluating factors, including, but not limited to, all of
19 the following:

20 (a) The number of jobs created by the program in this state.

21 (b) The number of businesses that have remained in this state
22 or relocated to this state as a result of the program.

23 (c) The amount of state and local revenue and economic activity
24 generated by the program.

25 (d) The amount of reduction in greenhouse gases, air pollution,
26 water pollution, or energy consumption as a result of the program.

27 SEC. 5. This act provides for a tax levy within the meaning of
28 Article IV of the Constitution and shall go into immediate effect.